

AARON VAN CAMP AND VIRGINIUS P. CHAPIN.

JUNE 23, 1898.—Ordered to be printed.

Mr. WARREN, from the Committee on Claims, submitted the following

REPORT.

[To accompany Mr. HANSBROUGH's amendment to S. 3546.]

The Committee on Claims, to whom was referred the proposed amendment to bill (S. 3546) to send certain claims to the Court of Claims for adjudication, have considered said proposed amendment, beg leave to submit the following report, and recommend that said amendment be amended by inserting after the word "claim," at the end of line 1, on page 2, the following:

To hear and determine the question of the liability of the United States for the losses found by said court in its said sixth finding of facts.

And that said bill so amended do pass.

The Court of Claims having found the facts, with the exception of the liability of the United States for said losses, your committee have examined into the history of said claim since the acts complained of occurred, and find that the claimants petitioned Congress for redress, and at the second session Thirty-fifth Congress, the Hon. Miles Taylor, from the Committee (H. R.) of Claims, made a favorable (No. 212) report, recommending that the Government of the United States pay the amount of said losses. No further action was taken during said Congress.

At the first session Thirty-sixth Congress, Mr. Ely, from the Committee on Claims, on May 25, 1860, made House Report No. 569, recommending that the United States Government pay said losses, and on March 21, 1860, at the first session Thirty-sixth Congress, Mr. Iverson made Senate Report No. 148, recommending that the United States pay said losses.

Your committee have not discovered any further action on the part of Congress until about June, 1886, when the Committee on Claims (H. R.) ordered the petition of said claimants to be transferred to the Court of Claims, under the act of March 3, 1883; said petitioners claimed that they had suffered a loss of over \$126,000 by reason of the acts of the officers of the United States. Upon a hearing before the Court of Claims the aggregated loss was fixed by said court at \$60,100, but they did not pass upon the liability of the Government because of the want of jurisdiction.

The court certified the facts to the House of Representatives on January 18, 1891, but no action has been taken thereon by Congress, except Senate committee made a verbal adverse report at the second session of the Fifty-first Congress.

Your committee have examined Senate Report No. 148, made at first session Thirty-sixth Congress, and find that it gives a full and complete history of the acts of the United States officers in connection with said claim, and some of the authorities and precedents showing that the United States has assumed and paid damages done by similar acts of its officers; therefore we adopt said report as our own and make it a part of this report.

[Senate Rep. Com. No. 148, Thirty-sixth Congress, first session.]

In the Senate of the United States. March 21, 1860.—Ordered to be printed. Mr. Iverson made the following report, to accompany bill S. 297.

The Committee on Claims, to whom was referred the memorial of Van Camp & Chapin, concurring in the report made by the Hon. Miles Taylor, of the Committee of Claims of the House of Representatives of the last Congress, hereby adopt the same as the report of this committee in the case aforesaid. The said report is as follows:

[In the House of Representatives, March 3, 1859.]

The Committee of Claims, to whom was referred the memorial of A. Van Camp and V. P. Chapin, asking compensation for property of which they allege they have been deprived, at Apia, in the Navigators Islands, by the wrongful acts of the commercial agent of the United States, exercising authority there, have had the same under consideration and now respectfully report:

The allegations contained in the memorial, and the facts stated in several depositions accompanying it, were of such a nature that your committee deemed it proper to apply to the State Department for any information it might be in possession of connected with the various transactions which, in the opinion of the memorialists, gave rise to the claim preferred against the United States. In answer to the application made to it, that Department laid before the committee an immense mass of original papers, embracing everything in existence which was calculated to throw any light upon the subject before the committee, but intermingled with a vast deal of matter that could have no bearing upon it. These papers have all been examined with as much care as the time at their disposal would allow; and the committee will now give such a narration of the facts disclosed by those papers as seems necessary for the proper decision of the question presented by the memorial, without entering into any very extended or particular detail of them.

Mr. Chapin had been for some time commercial agent of the United States at Apia, in the Navigators Islands, when he was superseded by Mr. Van Camp, in 1854. Mr. Chapin was engaged in carrying on a commercial business whilst he acted as commercial agent, and Mr. Van Camp, when he arrived at his post, entered upon the same pursuit and provided himself, by the purchase, etc., with the land and buildings necessary for the prosecution of his trade and for the accommodation of the members of his family by whom he was accompanied. After the arrival of Mr. Van Camp it seems that he and Mr. Chapin carried on business each on his own account until some time in the spring of 1855, when they formed a commercial partnership under the name and style of V. P. Chapin & Co. The business carried on by the partnership appears to have been considerable and to have required for the prosecution a very considerable stock of merchandise and several establishments.

Whilst Mr. Van Camp was thus engaged in carrying on a mercantile business he also gave his attention to the proper business of his office of commercial agent, and it is shown by the papers before the committee that his conduct in his official capacity, in various instances, gave rise to complaints against him on the part of those who were affected by it. Reports growing out of the complaints against him, and injurious to his character, were widely circulated in various parts on the Pacific, and it is altogether probable that some of them were communicated to the State Department, though there is no direct evidence to that effect before us. During this same period, also, difficulties grew up between Mr. Van Camp, in his capacity of commercial agent for the United States, and Mr. Pritchard, the British consul, which led to much angry discussion, and at last terminated in an appeal on the part of Mr.

Pritchard to Captain Fremantle, of her Britannic Majesty's navy, who was in those waters with his ship, the *Juno*. And, in addition to these difficulties with Mr. Pritchard, the British consul, Mr. Van Camp had another with divers residents of Apia in relation to a road, or street, or right of way, in which different holders of property near the bay were interested, in which Commander Bailey, of the United States Navy, intervened in some way.

Mr. Van Camp left his post on the 12th of May, 1856, on board of the United States ship *Independence*, with his family, for Valparaiso. The cause of his departure for Valparaiso, he states, was the necessity of going there to look after the disposition of a large amount of property belonging to American citizens, which was there in his possession. This property consisted of the cargo of the American whale ship *Rambler*, which arrived at Apia in distress in December, 1855. That ship having been condemned as unseaworthy, the cargo had been placed in the warehouses of the memorialists by the master, and he, not being able to dispose of it after some three months' stay, had given it in charge to Mr. Van Camp, with authority to him to make the best disposition of it in his power for all concerned. Some time having elapsed without Mr. Van Camp having an opportunity to make any disposition of this property at anything approaching a fair price, he determined to ship it to Valparaiso, and for that purpose he chartered the schooner *Eudorus*, Captain Seaman, for \$4,000, to proceed to Valparaiso. The cargo of the *Rambler*, with some property of the memorialists to complete the lading, was shipped on the *Eudorus* before the departure of Mr. Van Camp; and when he left Apia on the 12th of May, 1856, in the *Independence*, it was expected the *Eudorus* would have followed in a few days. This, however, was not to be.

Many months before this Mr. Van Camp had been superseded in his office of commercial agent of the United States for the Navigators Islands by the appointment of one Jonathan S. Jenkins to the place. What was the cause of the removal of Mr. Van Camp does not appear. It is more than likely that it was produced by the reports in circulation to his injury, though nothing of the sort appears from the papers, and there is nothing to show that any inquiry into their truth was ever instituted under the direction of the State Department. Upon whose recommendation or upon what information Jenkins was appointed is unknown to your committee. But a more unfit person to fill any place—and least of all a place of such responsibility beyond the confines of civilization—it is entirely apparent from his own correspondence with the State Department, and from other evidence, could not well have been selected.

Mr. Jenkins left San Francisco, California, in the early part of March, 1856, in the schooner *Jeannette*, bound for the Navigators Islands, and was accompanied on his voyage by Thomas F. Martin and James M. Conway, two persons who claimed to have been injured by Mr. Van Camp in proceedings taken by him in his official capacity with respect to the American barks *St. Mary* and *Elvira*. It appears from the affidavit of Samuel J. Agnew that Jenkins, before leaving San Francisco, declared he was "going to the islands to arrest Van Camp and seize and sell his property to pay Martin and others who claimed to have been robbed by Van Camp," and on the voyage frequently stated that "he had the power, if he caught Van Camp, to hang him, and that his power was equal to a king's." The same purposes and the same exaggerated notions as to his powers are also shown by the correspondence of Jenkins with the State Department. In his letter to the Secretary of State of August 11, 1856, he says, in the course of a narrative of his proceedings after his appointment, that "California was rife with accounts of Mr. Van Camp's malversations, and it was reported that he had a gang of rascals at his back," and then remarks that he "felt anxious, but none the less resolute, determined to take life in the maintenance of the honor and dignity of his office."

Information was given to Mr. Jenkins of his appointment by a letter from the State Department, dated on the 31st of December, 1855. His official bond was given at San Francisco on the 9th of February, 1856. On the 20th of February, 1856, he wrote to the State Department, as appears from one of his letters, mentioning his design of regarding the provisions of the act of Congress entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," approved August 11, 1848, as having so extended an application as to clothe him, in the Navigators Islands, with the same authority. And on or about the 6th of March, 1856, he sailed from San Francisco for his consulate, before it was possible for him to have any reply to that letter. While on his voyage thither, it seems, both from his letter to the Department, inclosing copies of what he terms his "decrees," and from the deposition of Samuel J. Agnew, before referred to, that Mr. Jenkins made every preparation necessary to give what would seem to be the forms of law, in the eyes of ignorant or interested men, to the extraordinary course of violence meditated by him. At that time he prepared and signed papers in which he assumed to create a consulate court of the same character and

clothed with the same powers with those provided for in the act just referred to approved on the 11th of August, 1848, and proceeded to appoint a clerk for the court to be organized and a marshal to execute its process. Robert S. Swanston and Samuel J. Agnew, who were passengers with Mr. Jenkins on the schooner *Jeannette*, were appointed to the places thus created by him, and were sworn in to their respective offices before the schooner entered the harbor of Apia.

It further appears from the letters of Mr. Jenkins to the Department of State, and from the papers accompanying these letters, which are now before the committee, that the schooner *Jeannette*, with Mr. Jenkins and his newly appointed officials on board, arrived off the harbor of Apia on the evening of the 16th of May, 1856, and that Mr. Jenkins having, upon inquiry, learned from the pilot who came on board of the schooner that Mr. Van Camp had left Apia, but that a vessel which was to sail the next day for Valparaiso was then in the harbor laden with property of his, sent Martin and Conway ashore to request Mr. Pritchard, the British consul, to detain the vessel in question until his (Jenkins's) arrival in port. The British consul, in conformity with this request of Mr. Jenkins, detained the vessel.

On the next day Mr. Jenkins entered the harbor of Apia, and his marshal, acting under the authority of an order signed by Jenkins on the 16th of May, 1856, and directing him to take possession and control of "all the property of or belonging to Aaron Van Camp, late United States commercial agent for Apia, wherever it may be found, and of whatever kind and description it may be," etc., proceeded to take possession of the property laden on board of the *Eudorus*, and to seize the private dwelling of Van Camp, together with the buildings, merchandise, etc., belonging to V. P. Chapin & Co., in which Van Camp had an interest.

But this was not all. On the same day Mr. Jenkins made another order, in the following words:

UNITED STATES CONSULAR COURT, APIA, IN THE ISLAND OF UPOLA, NAVIGATORS ISLANDS.

The President of the United States of America to the marshal of the United States for the consulate of Apia and his deputies, or any of them, greeting:

Whereas an oath has been made to me charging that Aaron Van Camp did, on or about the 16th of May, 1855, unlawfully and piratically and feloniously seize and take possession of the American bark *St. Mary*, within the jurisdiction of the consular court of the consulate of Apia.

Now, therefore, you are hereby commanded, in the name of the President of the United States, to apprehend the said Aaron Van Camp and keep him in safe custody until he be dealt with according to law.

JONATHAN S. JENKINS,
United States Consul and Vice Commissioner for the
Consulate of Apia, Navigators Islands.

What scenes of violence and blood might have followed an attempt to execute such an order, out of the sphere of any civilized government, by misguided or designing men, no one can tell. Luckily, for the reputation of the United States, the absence of Mr. Van Camp, on his voyage to Valparaiso, left Mr. Jenkins no opportunity "to take life," in vindicating "the honor and dignity of his office," through the exercise of his usurped powers, as he says in his letter of the 11th of August, 1856, he was prepared to do. The property of Mr. Van Camp, however, and that of other persons which had been confided to his care, was within Jenkins's reach, and he proceeded to work his will upon it through the agency of a series of proceedings, which were not only carried on without any shadow of legal authority, but were in themselves as iniquitous as they were illegal.

Soon after landing in Apia, Jenkins appointed three associate judges to sit with him in the consular court, established by the decree passed by him before his arrival. These "associates" were Horace D. Dunn and Josiah B. Leeds, the supercargo and captain of the *Jeannette*, in which he had come to the islands as a passenger, and Henry Seaman, the captain of the *Eudorus*, whose cargo had just been seized by Jenkins's order. When they were appointed does not appear; but their written acceptances of the "commissions" issued to them are among the papers, and bear date on the 22d and 23d of May, 1856; and two proceedings—one in the name of Thomas F. Martin, and the other in the name of J. M. Conway, and which were entitled cases "in admiralty"—were then instituted, before the court so organized, against Mr. Van Camp, and were carried on with such speed that they were brought to a termination by final decrees bearing date on the 29th and 31st of May, 1856, upon which executions were immediately issued.

All the property on board of the *Eudorus*, though a large portion of it belonged to

third parties, together with the other property previously taken possession of under the orders issued by Jenkins on his arrival, was seized as the property of Van Camp under these executions, and sold at auction on the 2d day of June, 1856, the third day after the seizure. Your committee have not found among the papers any detailed report of this sale, showing what was sold, or what were the prices paid for the different species of property, or who were the purchasers; but there is a statement among the papers before them, dated June 16, 1856, and which was sent to the Department of State by Mr. Jenkins, with his letter of the 30th of September, 1856, from which it appears that the proceeds of the sale made by the marshal, on the 2d of June, 1856, amounted to \$16,993.16; and that, after deducting from that amount the sum of \$1,877.31 for the marshal's fees and other "cash expenses" of the proceedings had, the remainder, forming the sum of \$15,115.85 was paid into the consular court. Accompanying this statement is another showing how this sum was disposed of. From that statement it seems that the further sum of \$431.25 was appropriated to pay the fees of the clerk and court; that \$4,000, the full amount to be paid to Captain Seaman, master of the *Eudorus*, under his charter-party, for the freight from Apia to Valparaiso, of the property shipped on it by Mr. Van Camp have been paid to Captain Seaman, although his vessel had not left the harbor; that \$9,606.60 had been paid to Martin in part satisfaction of his judgment; and that a balance of \$1,077.90 still remained at that time in the consular court.

What was the real value of the property thus sold and disposed of your committee have no means of knowing; nor is it, perhaps, of any importance that it should be known, to enable the House to act in a proper manner on the question presented to it by the memorialists. There can be no doubt, however, when all the circumstances are considered, that the property put up at sale, under the authority of Mr. Jenkins, was wantonly sacrificed, to the grievous injury of all those having an interest in it. And the question then arises, have the memorialists any claim, legal or equitable, upon the United States in the case presented by them; and, if so, then what is the extent of that claim? Does it reach to the value of the whole property of which they were deprived by the action of Jenkins? Or is it to be diminished because a portion of it was really applied to the payment of a debt or debts legitimately due by them? Before entering on the question as to the existence of any liability at all to the memorialists on the part of the United States, your committee think it best to dispose of the question as to there being any indebtedness on the part of Van Camp, one of the memorialists, to either Conway or Martin, in whose names the proceedings carried on by Jenkins were instituted.

J. M. Conway preferred a claim against the effects of Aaron Van Camp for the sum of \$6,585, for the value of the New Granadian bark *Elvira*, which had been some time before sold, as he alleged, by the authority of Mr. Van Camp, acting in his capacity of commercial agent.

The facts in relation to the sale of the *Elvira*, as shown by the original papers before us, are briefly these: The bark *Elvira*, Captain E. Alley, master, arrived at Apia from San Francisco, bound to Sidney, on the 26th April, 1855, and among the persons on board was one P. S. Colby, who claimed to be the owner of the bark, and was so admitted to be by the master. On the same day the master of the bark, E. Alley, and P. S. Colby went before Mr. Van Camp as the commercial agent of the United States at Apia, and made a protest in relation to this bark, styling it the "American bark *Elvira*, of San Francisco." In this protest, which was signed by them both, various charges of misconduct were made against Jesse L. Atwood, first officer of the bark, and prayed that he, Atwood, might be discharged from the vessel and dealt with according to law. The following day P. S. Colby, calling himself the owner of the American bark *Elvira*, went before Mr. Van Camp in his official capacity, and, together with J. M. Coe, Lewis Bartlett, then mate of the bark, and Robert Stanley, declared upon oath that the passengers and crew of the vessel were in a state of insubordination and mutiny, and in consequence of this fact, Mr. Colby, then, in the same written instrument, called on Mr. Van Camp, as the United States consul, "to take into his possession the said bark and cargo, and to make the best arrangement he could for the benefit of all parties concerned." On the next day (the 28th of April, 1855), the master of the bark, Captain Alley, stated under oath that he had had great difficulties with her passengers; that on his voyage from San Francisco they had used very abusive language towards him and threatened to take his vessel; and that since his arrival at Apia, "a mob of some twenty" of them had "come to the house on shore where he was sick, and said that he should go no further on the voyage; and that in the evening of the same day they had repaired on board the ship, drove the mate away and taken possession of her." In this statement Captain Alley declared that he and Mr. Colby, the owner, who was a passenger with him, were American citizens, and calls on Mr. Van Camp as the United States commercial agent, to take possession of his vessel, the bark *Elvira*.

After this, thirty-one passengers on the bark addressed a letter, dated on the 30th of April, 1855, to Mr. Van Camp, as the United States commercial agent, and to G.

Pritchard, as the British consul, jointly, in which they style the bark the New Gradian bark *Elvira*, and make a statement of the grievances under which they say they had been and were still laboring. They represented that they had been detained in San Francisco "about a month while on board of the bark," owing to an insufficiency of funds on the part of the owner or owners; that they had sailed from San Francisco with rotten rigging and rotten sails; that they were then without fresh provisions of any kind; that there was neither captain, mate, steward, or sailors on board; and that they were left in the vessel, out in the harbor, without a supply of good fresh water, and without any means of communicating with the shore. They further asserted that it was admitted by Captain Alley himself that the bark could not proceed to sea without a cash advance of three or four thousand dollars to procure the sails and rigging and provisions necessary for the voyage; and as they had no confidence in Captain Alley, who, they said, got frequently intoxicated, and was unfit to be intrusted with the command of the vessel, they therefore begged leave to place their interests under the joint protection of the two functionaries, inasmuch as their different nationalities authorized both of them to interpose in their behalf. This letter of the passengers was followed, on the 2d of May, 1855, by a statement addressed to the commercial agent and signed by Lewis Bartlett, the first officer, and five seamen belonging to the bark, in which they "complain that the said bark is not safe, or in a suitable condition to go to sea, because she is insufficiently supplied with sails, rigging, and provisions."

Acting on these various representations and statements Mr. Van Camp ordered a survey of the bark. The survey was made on the day after the representations and statements were presented, and the two "master mariners," Captain Richard M. Jackson and Captain Henry Seaman, who made it reported it as their opinion that the vessel had been well provided, but that at that time she stood in need of a number of new sails, and that the running rigging, fore and aft, should be replaced; and they also found that the expense of supplying her with extra provisions for her voyage would amount to sixteen hundred dollars, or "thereabouts." After this survey was made no progress whatever was made in getting the vessel ready for sea; and on the 28th of June following Captain Alley made a declaration in writing to the effect that he could "not raise money by bottomry or in any other way," and that as his crew had had a survey held on the vessel and she had been condemned, and he was not able to make the necessary repairs, &c., and his crew insisted on being paid off, and that therefore he, "E. Alley, master of the said bark," consented that Aaron Van Camp should "sell the said bark at public auction for the purpose of paying the crew and other lawful claims against her."

Acting under the authority of law, and of the formal request of the master of the vessel, Mr. Van Camp proceeded to sell the *Elvira* at auction, to the highest bidder, on the 2d of July, 1855, when P. S. Colby, her owner, being the highest bidder, she was struck off to him for the sum of \$1,200. This sale was ratified by Captain Alley, who executed a formal act of sale for her to Colby on the 3d of July, and on the 5th of the same month relinquished the command of her and turned her over into the possession of Colby as the purchaser.

What became of the cargo of the *Elvira* does not appear from the papers, but it clearly appears that it was disposed of by the authority of Captain Alley, as there is an order from him to Van Camp, dated on the 17th of July, 1855, in which he directs him to deliver twenty boxes of tobacco, which he had left with him, to P. S. Colby, and "to settle with him for all of his claims and demands against the sixty thousand feet of lumber" which he had landed at his place from the bark *Elvira*.

From this recital of the facts disclosed by the records of the State Department relating to this transaction it would seem that the bark *Elvira* was disposed of with the authority of law and of the master and of the reputed owner, and that no liability could attach to Mr. Van Camp for his acts, even though it were true that J. M. Conway was the real owner of the *Elvira* at the time of her departure on her voyage from San Francisco. But there is reason to believe, from what appears in the papers before us that Conway had no real interest in the vessel. The only evidence of title presented before the court created by Jenkins, on the part of Conway, was a sale purporting to have been executed in San Francisco on the 19th of February, 1855, to James M. Conway by one Jesse L. Atwood. No evidence of title in Atwood was offered or shown to exist. Now it appears from the papers in the State Department that there was a Jesse L. Atwood on board of the *Elvira* in the capacity of first officer or mate on her arrival at Apia, and that he was dismissed from the vessel there by the authority of the commercial agent for misconduct on charges preferred by Captain Alley and P. S. Colby, the reputed owner. In the absence of proof to the contrary, is it not fair to presume that the Jesse L. Atwood who was on the bark *Elvira* in the port of San Francisco as mate at the time the pretended sale to Conway was made, and who was dismissed from the bark in Apia for misconduct, was the same Jesse L. Atwood who made the sale set up by Conway, and one and the same person? If that were so it would be entirely in keeping with all the other features presented by this case.

The suit of Conway against Van Camp in Jenkins's consular court, as appears from a copy of the record now before us from the State Department, was instituted on the 29th of May, 1856, and proceeded with such remarkable celerity and convenient expedition, that it was brought to a conclusion by a final decree rendered on the 31st of the same month, the second day after it was begun. But this was not by any means the most extraordinary circumstance in the case. Among the evidence laid before the court, though it seems that much of the most important must have been purposely kept out of sight, there was enough to show the real nature of the transaction, so far as Mr. Van Camp was concerned, and in consequence the "associate judges" decided unanimously that if Conway was the true owner of the bark, the case presented was one of barratry of the master, "and that no just cause of complaint" could lie "against the said Aaron Van Camp," &c. This decision, made on the 30th of May, 1855, was not in accordance with the views or wishes of Jenkins, and on the next day, in violation even of the provisions of the very act under which he pretended to derive the extraordinary powers he had been exercising, he overruled that decision, and proceeded to make a decree condemning Van Camp to the payment of \$6,589 as damages, and the costs of the proceedings.

We will now turn to the other claim—that of Thomas F. Martin. This claim against Mr. Van Camp, as made before the consular court of Jenkins, was for the sum of \$20,001.42, for the value of the American bark *St. Mary* and her cargo, which he alleged Mr. Van Camp had unlawfully and feloniously converted to his own use, and for the loss of the profits which he might have realized by the use of the vessel from the day of seizure until the claim was preferred, and to compensate him "for the griefs, ill-usages, and hardships which the conduct of Van Camp had entailed on him." The sum total is made of various items set forth by Martin in detail, among which are the following:

First cost of the <i>St. Mary</i>	\$3, 250. 00
Expenses in fitting her for sea.	2, 322. 62
Profits that he could have realized by the use of his vessel from the day of her seizure until the making of the claim, at the rate of \$500 a month.	6, 000. 00
For the griefs, ill-usage, and hardships entailed on him, &c.	4, 000. 00

The facts in the case of the *St. Mary*, as shown by the papers before us, are these:

The bark *St. Mary*, Thomas F. Martin, master, from San Francisco, bound to Melbourne, arrived at Apia early in May, 1855, in distress.

On the 6th of May, 1855, Captain Martin wrote to Mr. Van Camp, as commercial agent, charging Francis Stanley, his first mate, and William Thurgood, his second mate, with gross disobedience of his lawful orders, both on the voyage from San Francisco and since his arrival at Apia, and complaining of the conduct of his passengers, and formally protested "against the said officers and passengers continuing on the voyage on the said ship with him." On the 7th of the same month (the day following), Captain Martin and his first mate, Stanley, made their protest before Mr. Van Camp, in his official capacity, in which they spoke of the severe weather which had put the bark in its distressed condition, and had led to the loss of a part of her cargo; and on the same day the second mate, with the carpenter of the barque and four of the seamen, made their written complaint to Van Camp, as commercial agent, in which they represented that the *St. Mary* was not in a suitable condition to go to sea: 1st. Because she was in a leaky condition; 2d. That she was "insufficiently equipped with sails and running rigging; and, 3d. That her provisions were inadequate, both in quantity and quality, for the prosecution of her voyage. Upon these various representations, a survey of the *St. Mary* was ordered.

This order was followed by a survey made on the 2d of June, 1855, by John McClemons and James Parker, ship masters, duly appointed to make the same, who declared, upon oath, that, after a careful examination of the bark, they found "her hull very rotten and unfit for sea, unless she should have new topsides and deck." And they further stated that the cargo of flour and barley was "very much damaged." There is another instrument also among the papers, purporting to give the result of an inspection as to the condition of the "cargo" of the *St. Mary*, made on the same day, on the joint request of Captain Martin and Mr. Van Camp, by Joseph A. Wilson and Francis Stanley, Captain Martin's mate. The examination made by these persons did not extend to the condition of the vessel. It was limited to ascertaining the condition of her cargo alone, and beyond all doubt preceded the other. It was not, in any sense, an official act, as it was not verified by oath, but seems to have been a mere private paper, clothed with no official formality. Whatever may be the character of the paper, whether it be official or a mere private one, its contents fully sustain the propriety of the commercial agent's interference in the case, for it is distinctly stated in it that the vessel was found "in a neglected and dirty condition;" that "the passengers were in a state of mutiny and confusion, and apparently in charge of the vessel;" that "the body of the cargo" "was badly damaged on the bottom, in the wings, and on top, apparently caused by leaky bottom, side, and deck;" and that, "for the purpose of preserving a portion of the cargo, it should be all removed from

the vessel;" and it is further declared that, "in the present condition of the vessel, it would be very improper to reship it in her."

It is proper to mention that another paper, of the same description with the one just spoken of, seems to have been executed by Henry Seaman and Joseph A. Wilson, bearing date on the 8th of May, 1855, as is stated in the record of the proceedings in the consular court of Jenkins, at the instance of Martin; that such a paper was produced, though the original of it is not to be found among the papers before us. This paper, however, like that executed by Wilson and Stanley, corroborates the correctness of the decision of the ship masters who held the survey ordered upon the bark, as the persons making it, after stating the result of their inspection of the vessel and cargo in detail, certify at the close of their report "that in her present state the vessel was," in their opinion, "unsafe to go to sea."

In consequence of these various proceedings and of the condemnation of the vessel as unseaworthy by the shipmasters, who held a legal survey upon her, Mr. Van Camp ordered the vessel and cargo to be sold for the benefit of those whom it might concern; and it seems clear from all the evidence that this order, so far as it related to the sale of the cargo, was made with the full concurrence of Captain Martin. Whether Captain Martin did or did not consent to the sale of the bark also is involved in more doubt. That sale was made on the 26th of June, 1855. Among the papers received in evidence by Mr. Jenkins's court in the case of Martin against Van Camp is one dated on the 25th of June, the day previous, in which he protests against the sale of the bark, and declares that although the vessel had been condemned, he, as owner, still claimed the right of holding his own property and disposing of it at his own pleasure. There are other facts, however, shown by the papers, which seem to be inconsistent with this position of Captain Martin.

But it seems to your committee unnecessary to decide this question. Whether Captain Martin was or was not opposed to the sale of his vessel was immaterial. His ship had been condemned as unseaworthy. He was unable to repair and equip it in such a manner as to fit it for going to sea. The cause of the unseaworthiness of the vessel was the rottenness of the hull, a defect existing previous to the commencement of the voyage, so that his voyage was broken up in such a manner as to make the vessel liable for the wages of the crew, and there was, under all the circumstances of the case, legal authority in Mr. Van Camp, as commercial agent of the United States, under the act approved July 20, 1840 (5 Statutes at Large, 396), to sell the vessel for the payment of the crew.

But this is not all. There is the fullest evidence among the papers placed before your committee by the State Department to show that Captain Martin neither had, or could have had, any claim against Mr. Van Camp growing out of this transaction. This necessarily results from the facts, first, that Captain Martin made a sale of the bark *St. Mary* on the 2d of July, 1855, to Joseph A. Wilson, who had succeeded to the rights of the person bidding her in at auction, for the sum of sixteen hundred dollars, the amount of the bid made at the auction, and in the act of sale made by him acknowledged the receipt of the price; and, second, that he gave a power of attorney to the same Joseph A. Wilson on the day following, in which he empowered him to demand, sue for, and receive, all sums of money due him, &c., and to make a final settlement of all matters appertaining to the bark *St. Mary* whilst lying in the harbor of Apia, under which a final settlement was made by his attorney in fact with Van Camp, and a full acquittance granted to him, on the 11th of October, 1855. It is, however, due to Mr. Van Camp to say, that the papers before the committee show that the total of the sales made by him of the bark *St. Mary* and her cargo amounted to the sum of \$9,081.85; and that it appears from the settlement made with Joseph A. Wilson, the attorney of Martin, on the 11th of October, 1855, Martin himself had received the sum of \$4,357.30 from Van Camp prior to the 12th of July, 1855; that the sum of \$2,000 only was paid over to the attorney in fact on the settlement, and that the remainder of the total amount of the sales of the bark and her cargo had been appropriated to the payment of the wages of the officers and crew and of the expenses incurred, and of certain notes given by Captain Martin to persons on board for advances of money.

In the absence of all explanation, it would excite surprise that any court, no matter how illegally created or constituted, should be able to make such a decision as that given by the consular court of Jenkins with reference to a case like that of the *St. Mary*, when the facts involved in it were of such a character as to almost necessarily have great publicity, and all of them had transpired in the very place where the court was holden. But in the present instance there is no room for surprise when all the circumstances connected with the transaction are considered.

The pretended court was created for the express purpose of depriving Mr. Van Camp of his property. It sat beyond the limits of any well ordered government, so that it was nearly certain that those who contributed to make it an agent for perpetrating a bare-faced spoliation would go unpunished. One of the members of the court, Seaman, was so situated as to find it to his personal advantage to lend himself

to the scheme of Jenkins, as its success enabled him to realize the four thousand dollars under his charter-party to Van Camp, without leaving Apia. The two were so connected with Jenkins as to subject them in a great degree to his influence. And the task imposed on these instruments was rendered a comparatively easy one by keeping out of view the most material parts of the evidence in existence.

But powerful as were these means at the disposal of Jenkins, it is probable that even they would not have been sufficient to give success to his designs, had it not been that there was a decided hostility to Mr. Van Camp on the part of Mr. Pritchard, the British consul, who had a controlling influence in the neighborhood, and that Mr. Van Camp seems to have been quite unpopular with most of the white persons residing at Apia. It is proper to observe here that, so far as your committee is able to judge of the cause of Mr. Van Camp's unpopularity with the white persons there, from the papers before them, it was not attributable to anything connected with his official conduct, but grew out of differences between him and some of his neighbors as to the lines of their respective properties and a right of way over land claimed by him. It is also proper to state, in justice to Mr. Van Camp, that the difficulties between him and Mr. Pritchard, the British consul, rose to such a height that Mr. Pritchard brought them, officially, to the notice of Captain Fremantle, of Her Britannic Majesty's ship *Juno*, who was then cruising in those seas, and that Captain Fremantle, after taking the charges of Mr. Pritchard into consideration, decided that, with respect to the principal one, Mr. Van Camp was right, and that the others were of too frivolous a character to require a decision on them from him.

In whatever light the proceedings of Jenkins may be viewed, they merit unmeasured reprobation. The claims which he attempted to enforce against the property of Mr. Van Camp had no foundation in law or equity. But if it had been otherwise his conduct with respect to the whole matter would have been iniquitous in the highest degree. There was no warrant of law for the establishment of a consular court at Apia. Nor is there even the shadow of an excuse for the pretense which he set up beforehand to palliate his meditated usurpation of power. The act approved August 11, 1848, to which he referred in the communication notifying the Secretary of State of his intention to create such a tribunal, left no room for such a construction as he there pretended to give to it. That act was entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and there is not a provision in the act in relation to the exercise of the powers conferred which does not, in the most positive manner, negative the idea that any such power could be exercised elsewhere than in China or Turkey by the agents of the United States.

By the law of nations the municipal laws and institutions of a State can operate beyond its territorial limits and within the territory of another State only by the authority of special compacts between the two States. It is from that source alone that consuls and other commercial agents derive the power to exercise over their own countrymen a jurisdiction in the territories where they reside. This jurisdiction, as it is exercised merely for the convenience of trade, is restricted among civilized nations within very narrow limits, and it is only with respect to China and Turkey that the United States have entered into any treaties providing for the creation of courts and the exercise of ordinary judicial powers by its own agents within the territory of another State. In the absence of any treaty and of any legislation by Congress authorizing it, the creation of a court by any functionary of the Government would be a mere usurpation of power; all the decrees of any court so created would be absolute nullities, which could give rise to no rights; and if, through the exercise of any jurisdiction thus pretended to be conferred, any person should be deprived of his property or be aggrieved in his person, all those in any way concerned in the exercise of the usurped power would be personally responsible for the injuries resulting from that usurpation.

In the present instance Mr. Jenkins, the commercial agent, who assumed the right to create a court, the members of that court who acted under the commissions issued by him, and the ministerial officers who gave effect to the decrees of that court were all equally responsible in law to Mr. Van Camp, Mr. Chapin, and all other persons interested in it for the full value of the property wrongfully seized and disposed of under color of the proceedings already detailed. But while this is true as a legal proposition, it is also true that it is absolutely impossible for those who were thus illegally deprived of their property to obtain any redress for the injury they have sustained from the actual perpetrators of the wrong done them. These men are probably without the means of making compensation, and if they were not, as they are all now stationed among the islands of the Pacific Ocean, they are certainly beyond the reach of judicial pursuit in our courts. Jenkins, the principal actor in the commission of the outrage perpetrated, returned to the United States and appeared in this city in the latter part of May, 1857. He, it is said, is notoriously without pecuniary means, and, in consequence of this, Mr. Van Camp, one of the memorialists who was

then in the city, preferred a criminal charge against him before one of the magistrates of the District for "feloniously and piratically robbing, stealing, taking, and carrying away the property of him, the said Van Camp, and others for whom he was agent, to the value of seventy thousand dollars, etc.," at Apia, in the Navigators Islands. On this charge Jenkins was arrested and committed to prison to await a requisition for his removal to the city of New York, where Jenkins had landed on his return to the United States, and where the offense charged upon him was cognizable. After his commitment to prison Jenkins applied to the criminal court of the United States for the District of Columbia for a writ of habeas corpus. This writ was granted; and on the examination of the case Jenkins was dismissed from custody without giving time to Mr. Van Camp to procure the attendance of witnesses to substantiate the charge, chiefly, so far as your committee can gather from the papers before them, on the ground that Mr. Appleton, the Assistant Secretary of State, stated when called on that he knew nothing about the facts, and that the district attorney of the United States, Mr. Key, informed the court, when applied to in relation to the matter, that "the Government declined to take any part in it and desired that he, Jenkins, should be discharged."

From the situation of the various persons concerned in the perpetration of the wrong it seems certain that the memorialists are entirely without remedy, unless they can obtain indemnity from the United States for the losses they have sustained through illegal action of a Government agent; and the question then presents itself, Is the Government of the United States bound to indemnify them under the circumstances of this case?

The general rule unquestionably is that a nation is not responsible for the illegal acts of its agents. But to this, like all other rules, there may be exceptions. No matter how just or important any particular rule may be in itself, it can not properly be applied to cases not embraced within the reasons on which it is founded. The reason of the general rule referred to is sufficiently obvious. In all well-ordered governments, where the laws are supreme and justice holds the scales and bears the sword, if any public functionary violates the law by usurping powers not conferred on him, or by the abuse of those with which he is actually intrusted, the courts are always open, and it is both the right and duty of every citizen who is aggrieved to call on them to interfere at once. If this duty is performed the illegal acts attempted to be done are prevented or restrained, or the damages caused by them may be repaired by enforcing the responsibility incurred by all those who were in any way connected with the transaction giving rise to them. But if, on the other hand, this duty is not performed; if, when one is within reach of courts competent to prevent or restrain the exercise of usurped authority, he fails to invoke their aid if the means are at hand to enable them to compel the wrongdoers to make compensation for the injuries they have done or the damages they have occasioned, then there can be no legitimate claim on the Government, either in law or equity, on the part of the sufferer, because the injury done him may be fairly considered as the consequence of his own fault, or the failure to obtain redress from those directly bound to him may be properly imputable to his own negligence.

But it must be otherwise, when the circumstances under which the wrongful acts are done are such that it is impossible to prevent the injury, or to obtain redress for it through the court. In such cases the reason of the rule, "that a nation is not responsible for the illegal acts of its agents," fails altogether, and the rule, in the opinion of your committee, can have no application. It is on that principle that compensation is made for property taken or destroyed in wars by our own forces, under certain circumstances; as, for instance, when the owner is compelled to yield the possession of it to overpowering, though illegal, force, and it was impossible for him to obtain redress for the wrong from the officer ordering, or those who committed it, because *inter arma silent leges*.

There is also another class of cases in which governments are required, by every principle of justice, to make compensation to those who have suffered loss through the negligence or misconduct of its officers. We allude, of course, to those cases where individuals suffer injury because the ordinary duties of government have not been performed by those appointed to discharge them; as, for instance, when property is destroyed in time of peace by a mob composed of unknown persons, or when, through the failure to keep streets and thoroughfares in proper condition, unavoidable accidents occasioning injuries, either to persons or property, are met with. It is not necessary to cite adjudicated cases of the kinds referred to, where corporations of cities have been condemned to make compensation. All are familiar with their existence, and it can hardly be necessary to say that, so far as to the principle involved in such cases, it is as applicable to claims resulting from them against the governments of States as against those merely municipal in their character.

The municipal governments of cities, like the governments of States, are established for the accomplishment of objects essential to the well being of the people within their jurisdiction; and, as all the powers necessary for the attainment of the ends

aimed at are vested in them, they are bound [to give to their citizens the various benefits and advantages which they were created to secure. If those living under a municipal government so constituted are injured or subjected to losses because the government refuses to exercise the powers conferred on it, or because the agents employed under their authority to carry them into effect either neglect or violate their duty, the government is held to be responsible to those who are aggrieved, on the ground that there has been a breach of the obligation imposed on it in their favor by the mere fact of its creation for the benefit and advantage of all. And then we ask, is not this equally true with respect to the governments of States? Is not the same obligation to secure their citizens against violence and wrong, and to extend to them the advantages proposed to be derived from their establishment, necessarily imposed on them also by the mere fact of their creation in the public interest? and do not the same legal and equitable consequences follow from their failure to act at all in discharge of this obligation, or from the neglect or misconduct of the officers to whom they have intrusted the performance of the functions necessary to carry it out? For our own part, we are constrained to say that we can discover no real difference, upon principle, between claims made in cases of the nature referred to, no matter what may be the character of the government under which they arise, and that the only practical difference which exists between them grows out of the fact that the government of a State, being sovereign, can not be sued, whilst that of a city is amenable to judicial pursuit.

Although the determination of the question involved in the present inquiry does not in any way depend upon the rules of international law, yet it is true that cases frequently arise, in the intercourse of nations with each other, connected with the individual rights of their citizens, which are calculated to throw some light on the point under investigation. If a citizen of one country is injured or subjected to loss whilst in another country by the unauthorized or illegal acts of its officials, it has always been held that the government of the country where the wrong was done is bound to make reparation for it, and that it is the duty of the country to which the person aggrieved belongs to demand it for him. This is the settled practice among civilized nations; and the history of our own negotiations with foreign powers presents various instances in which such claims have been allowed and paid to our own citizens by foreign governments, upon the interposition of our Government in their behalf. And why is this? Is it not upon the ground that a government is, in law or equity, bound to make reparation in such cases, and that the obligation is so complete and incontrovertible, upon the principles of the civil or municipal law, as contradistinguished from the law of nations, that it is not only the right of a nation to claim the fulfillment of the obligation in behalf of its citizens, but that it also has the right by the law of nations, to enforce its fulfillment, in the event of a refusal, even by resort to war? If this is so; if, by the laws of nations, it is the duty of our Government to compel a foreign government to make reparation to our citizens for the injuries done them by the improper or illegal acts of its agents; on what ground, or with what show of justice, can it be pretended that our own Government is not bound to make the same reparation when similar injuries are suffered from the improper or illegal acts of our own agents?

From all these various considerations, it seems clear to your committee that the transactions giving rise to the claim before us are in no way embraced in the reason of the general rule, that "nations are not responsible for the illegal acts of their agents," and that they are, in truth, within the reason of those in which it has been uniformly held by our courts that an obligation to repair wrongs suffered or losses incurred by individuals is justly imposed on the public. Indeed, it is not easy to conceive of a case which is more entirely within the recognized principles of law. The transactions on which the claim is founded took place beyond the limits of any Government competent to protect or vindicate the rights of individuals, and, it may be said, without the pale of civilized society. The only authority which could have been legitimately exercised there over American citizens was vested in the very man who was engaged in the perpetration of the wrongs complained of, and that man's usurpation of power was sustained by an overpowering physical force, which his official position alone enabled him to command. There was no means within reach of the sufferers by which the usurpation of power which caused the injury done could have been prevented, or by which the responsibility incurred by those concerned in depriving them of their property could have been enforced. But this is not all. Your committee are constrained to say, in addition to this, that the executive department of the Government seems to have failed altogether to make any efforts for the assistance or relief of our citizens who had been so grievously injured, after the facts in relation to the injury done them had been brought to its knowledge, and that there is good reason to believe that it was chiefly owing to its unwillingness to act that the principal wrongdoer, when there was an attempt made to bring him to justice, upon his venturing within the jurisdiction of our courts, was enabled to escape without a trial, or even a decent judicial investigation.

So far as your committee are informed, there has been nothing in the practice of the Government which is at all inconsistent with the views to which we have just given expression, whilst, on the other hand, there has been much in its previous action which seems to indicate a distinct recognition of their correctness. Without attempting an enumeration of the instances of that character, it will be sufficient for our purpose to refer to a single instance in the action of Congress in which such a recognition is necessarily implied. This is furnished by the act (6 Stat. at Large, p. 679) entitled "An act to provide for the settlement of the claim of Mary O'Sullivan," approved July 2, 1836.

In that case the facts were briefly these: A person by the name of O'Sullivan purchased an American brig in one of the South American ports, and took a bill of sale of her, and possession, in pursuance of it, was delivered to him; but as it appeared that the vessel had been registered at Baltimore as owned and commanded by one Furlong, and had been long absent from the United States, O'Sullivan deposited the purchase money on board the United States ship *Franklin*, and by contract made the payment depend on the future approbation of a commercial house in New York with which O'Sullivan was connected. Being, however, in possession of the vessel, O'Sullivan caused her to be repaired and refitted, and placing a new commander on board, he directed her to Rio de Janeiro, and from thence to Buenos Ayres, to take a cargo of hides to proceed to Cadiz.

Pursuant to these directions, the brig sailed for and arrived at Buenos Ayres. On her arrival there she was seized by the commercial agent of the United States, and the master and supercargo were required to give bond that she should immediately, and by the most direct route, proceed to the United States. These officers resisted the demand of the agent as far as practicable, and endeavored to procure such a modification of the bond required as would enable her to proceed on the voyage to Cadiz. These attempts were unavailing. Mr. Forbes remained inflexible; and the vessel was ordered home by the most direct route, and the greater part of the cargo of hides, which had been purchased, was resold. The agent of the United States retained the register and forwarded it, together with his charges against the brig, to the Secretary of the Treasury by another vessel. No proceedings, however, were had upon them on the part of the Government, and the brig, after remaining for some time in the port of New York, was libelled for seamen's wages and on a contract of bottomry, and sold. In the meantime O'Sullivan, the owner of the brig, had proceeded to Cadiz to await her arrival with cargo ordered to be shipped by him, and after having been detained there for some months, in vain awaiting her arrival, he returned to the United States; and it was to make compensation for the losses incurred by him in consequence of the breaking up of the contemplated voyage of his brig, through the action of the commercial agent, that the act for the relief of Mary O'Sullivan, just mentioned, was passed.

It is obvious from the circumstances of this case that it necessarily implies a complete recognition of the views before expressed by us as to the principle which should govern in deciding upon questions of this nature; and that if there be any difference between the two cases, that difference is altogether in favor of the one before us, as the illegal acts complained of by the memorialists were all perpetrated in a distant island where the population are almost in a state of nature, whilst the others all transpired within the limits of a well-ordered government.

In conclusion, then, your committee, in view of the facts now disclosed in this case, have no hesitation in saying that in their opinion the memorialists are entitled to compensation for the losses which they have actually sustained by the illegal acts of Jonathan S. Jenkins, commercial agent of the United States, under color of his office, and of those acting under his pretended authority; and we therefore present the accompanying bill and recommend its passage.